

R277. Education, Administration.

R277-104. ADA Complaint Procedure.

R277-104-1. Definitions.

A. "ADA" means the Americans with Disabilities Act, 42 U.S.C. 12201, which provides that no qualified individual with a disability, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by this or any such entity.

B. "The ADA Coordinator" means the designee of the Superintendent, who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities who are not USOE or USOR employees in accordance with the Americans with Disabilities Act, or provisions of this rule.

C. "Days" means calendar days.

D. "Disability" means, with respect to an individual disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual consistent with the Americans with Disabilities Act, 42 U.S.C. 12201.

E. "Executive Director" means the Executive Director of the Utah State Office of Rehabilitation.

F. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

G. "Individual with a disability" (hereinafter individual) means a person who has a disability which limits one of his major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities. This rule is directed at non-employees, including all types and periods of employment, of the Board, the USOE or the USOR.

H. "Superintendent" means the State Superintendent of Public Instruction.

I. "USOE" means the Utah State Office of Education.

J. "USOR" means the Utah State Office of Rehabilitation.

R277-104-2. Authority and Purpose.

A. This rule is authorized pursuant to 28 CFR 35.107 which adopts, defines, and publishes complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans with Disabilities Act, as amended.

B. The purpose of this rule is to establish USOE and USOR procedures for non-USOE, non-USOR and non-Board employees to file complaints under the federal ADA law and to provide appropriate classification of the records of complaints and appeals.

C. No qualified individual with a disability, by reason of such disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of the USOE or USOR, or be subjected to discrimination by the USOE or USOR.

R277-104-3. Filing of Complaints.

A. The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but not later than 30 days from the date of the alleged act of discrimination.

B. The complaint shall be filed with the USOE's ADA Coordinator in writing or in another format reasonable for the individual and the USOE or USOR.

C. Each complaint shall:

(1) include the individual's name and address;

(2) include the nature and extent of the individual's disability;

(3) describe the USOE's or USOR's alleged discriminatory action in sufficient detail to inform the USOE or USOR of the nature and date of the alleged violation;

(4) describe the action and accommodation desired; and

(5) be signed by the individual or by his legal representative.

R277-104-4. Investigation of Complaint.

A. The ADA coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in Section 3(C) of this rule if it is not made available by the individual.

B. When conducting the investigation, the coordinator may seek assistance from the USOE's and USOR's legal, human resource, budget, and State Risk Management staff in determining what action, if any, shall be taken on the complaint.

R277-104-5. ADA Coordinator Recommendation.

A. Within 30 days, the ADA Coordinator shall make a recommendation outlining what action, if any, shall be taken by the USOE or USOR on the complaint to the Superintendent, Executive Director, or both depending upon the circumstances of the complaint.

B. If the ADA Coordinator does not make a recommendation to the Superintendent within 30 days, the ADA Coordinator shall notify both the complainant and the Superintendent that the decision is delayed and provide a date certain for the investigation recommendation to be provided.

R277-104-6. Superintendent or the Executive Director or Both Review and Decision.

A. The Superintendent shall review the recommendation of the ADA Coordinator and make a final decision about action to be taken, if any, by the USOE or USOR.

B. The Superintendent shall provide a written decision to the complainant no more than 10 working days from the receipt of the ADA Coordinator's recommendation.

C. In making the decision, the Superintendent shall consult with the Executive Director if necessary and may discuss the investigation with the ADA Coordinator or other USOE or USOR employees, may gather additional information and interview other

individuals with relevant information or expertise and shall give appropriate deference to the ADA Coordinator's fact finding and review of information.

D. The Superintendent's decision is the final USOE and USOR administrative decision regarding the complaint.

(1) If the complaint and recommendation is solely about USOR services or facilities, the Superintendent shall consult with the Executive Director in making the decision.

(2) If the complaint and decision include USOE actions or facilities only, the Superintendent shall make the final administrative decision.

R277-104-7. Classification of Records.

A. The investigative record of each complaint and all written records produced or received as part of such investigations, recommendations, or actions, shall be classified as protected under Section 63G-2-305, until the Superintendent issues the decision.

B. Any portions of the record which pertain to individual's medical condition shall remain classified as private, as defined under Section 63G-2-302, or controlled, as defined in Section 63G-2-304. All other information gathered as part of the complaint record shall be classified as protected information.

C. The final written decision of the Superintendent shall be public information.

R277-104-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to the individuals under Section 67-19-32; the Federal ADA Complaint Procedures (28 CFR Subpart F, beginning with Part 35.170, 1992 edition); or any other Utah state or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: complaints, disabled persons

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